

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGER ALLEN BOGUE,

Defendant and Appellant.

E053767

(Super.Ct.No. FCH1100046)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stanford E. Reichert, Judge. Affirmed.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

**INTRODUCTION**

On February 2, 2011, a felony complaint charged defendant and appellant Roger Alen Bogue with possession of a controlled substance, to wit methamphetamine, in

violation of Health and Safety Code section 11377, subdivision (a). On February 17, 2011, at a preliminary hearing, the trial court denied defendant's motion to suppress evidence under Penal Code section 1538.5. On the same day, an information charged defendant with the same allegation as the complaint.

On April 11, 2011, jury trial commenced. Three days later, the jury found defendant guilty of possession of a controlled substance under Health and Safety Code section 11377, subdivision (a). On May 10, 2011, the trial court denied probation and sentenced defendant to 16 months in state prison. On June 2, 2011, defendant filed his notice of appeal.

On October 19, 2011, defendant filed a petition for writ of habeas corpus to the trial court on the ground that he was illegally sentenced to prison when he was eligible for mandatory Proposition 36 treatment under Penal Code section 1210 et seq.<sup>1</sup> On November 28, 2011, the trial court granted the writ and modified the sentence to the 205 days that defendant had served.

### **STATEMENT OF FACTS**

On February 1, 2011, City of Chino Police Officer Nicholas Marotta pulled defendant over for a traffic stop. Defendant consented to the officer's request to search his vehicle. Defendant told Officer Marotta that he had a knife in his pocket. The officer searched defendant's pockets and found a cigarette box containing three plastic bindles

---

<sup>1</sup> On January 6, 2012, defendant filed a request to augment the record on appeal regarding defendant's writ of habeas corpus. On January 25, 2012, we granted defendant's request to augment.

that contained a white crystalline substance. The substance in one of the bindles weighed 0.69 grams. That substance tested positive for methamphetamine. The contents of the other two bindles were not analyzed.

At the preliminary hearing, defendant moved to suppress the methamphetamine seized, all the observations of the officers, and all of defendant's statements. Defendant asserted that there was no probable cause for the prolonged traffic stop.

Officer Marotta testified that he made an enforcement stop of defendant's vehicle for violations of Vehicle Code sections 22108 (required use of turn signal), and 24252, subdivision (a) (required lighting equipment to be maintained in good working order). The officer asked defendant if he had been arrested for anything in the past; defendant replied that he had been arrested in the past for possession of a controlled substance. The officer then asked defendant for consent to search the vehicle. Defendant responded, "Yeah, if that's what you want to do." Approximately two minutes elapsed between the initial stop and defendant's consent.

While waiting for a backup officer, Officer Marotta asked defendant to exit the vehicle. He asked defendant if he had any weapons on him. Defendant replied that he had a knife in his pocket. The officer immediately put defendant into a pat-down position and conducted a pat-down search. The officer reached into defendant's pocket and found the knife and methamphetamine.

The trial court denied defendant's motion to suppress. The court held that the initial stop was proper, the stop was not unduly prolonged, and defendant's consent was

sufficient. The court also held that the consent extended to the vehicle and defendant's person.

### ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

### DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER  
Acting P.J.

We concur:

RICHLI  
J.  
MILLER  
J.